

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed April 25, 2005. Through this Response, independent claims 1 and 26 have been amended, and claims 4, 27 and 32 have been canceled without prejudice, waiver, or disclaimer. Reconsideration and allowance of the application and pending claims 1-3, 5-26, 28-31, and 33-38 are respectfully requested.

I. Drawings Objection

The drawings have been objected to as failing to comply with 37 C.F.R. 184(p)(5) because they include the following reference character(s) not mentioned in the description: Figure 2, 260 and 277; Figure 7, 735, 737, 740, 745 and 760. Further, Figures 8-26 contain numerous reference numbers which are not mentioned in the specification.

In response to this objection, the drawings have been amended to remove reference characters not mentioned in the description. In particular, FIGs. 2 and 7-26 have been amended to remove reference characters not mentioned in the description. A clean copy of FIGs. 2 and 7-26 and a marked-up copy of the same figures indicate all changes in red ink have been included with this Response. No new matter has been added.

In view of the above-noted amendments to the drawings, Applicants respectfully submit that the drawings are acceptable and respectfully request that the objection be withdrawn.

II. Specification Objection

The specification has been objected to for containing various informalities.

Specifically, the Office Action identifies that on page 7, line 31, “56” should be corrected to --256--.

In response to the objection, Applicants have amended the specification to replace “56” with “256” on page 7, line 31. Although this amendment effects a change to the specification, it is respectfully asserted that no new matter has been added. In view of this amendment, Applicants respectfully submit that the specification is not objectionable, and therefore respectfully request that the objection be withdrawn.

III. Specification Amendments

Various amendments have been made to the specification through this Response to correct typographical and grammatical errors and to provide a correct and accurate description of Applicants’ invention as originally disclosed. Although these amendments affect several changes to the specification, it is respectfully asserted that no new matter has been added.

IV. Claim Rejections - 35 U.S.C. § 103(a)

A. Rejection of Claims 1-10, 14-33 and 36-38

Claims 1-10, 14-33 and 36-38 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Herz et al.* (“*Herz*,” U.S. Pat. No. 6,088,722) in view of *Arai et al.* (“*Arai*,” U.S. Pub. No. 2002/0073425). Claims 11-13 and 34-35 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Herz* in view of *Arai* and further in

view of *Maze et al.* ("Maze," U.S. Pat. No. 6,216,264). Applicants respectfully traverse these rejections.

B. Discussion of the Rejection

As has been acknowledged by the Court of Appeals for the Federal Circuit, the U.S. Patent and Trademark Office ("USPTO") has the burden under section 103 to establish a *prima facie* case of obviousness by showing some objective teaching in the prior art or generally available knowledge of one of ordinary skill in the art that would lead that individual to the claimed invention. *See In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). The Manual of Patent Examining Procedure (MPEP) section 2143 discusses the requirements of a *prima facie* case for obviousness. That section provides as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teaching. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and reasonable expectation of success must be found in the prior art, and not based on applicant's disclosure.

In the present case, is respectfully asserted that a *prima facie* case for obviousness has not been established.

Independent Claim 1

Claim 1 recites (with emphasis added):

A media system, comprising:
a memory to store media information characterizing media; and

a processor configured by the memory to provide a user interface to enable a user to define a media presentation from the media information, wherein the processor is further configured by the memory to continually and automatically segue media stream changes among a plurality of the media streams containing the media to present the user defined media presentation, *wherein the user interface is configured to enable the user to prioritize in advance of a time corresponding to the media presentation the presentation order of the media corresponding to the media presentation defined by the user.*

Applicants respectfully submit that the combination of *Herz* and *Arai* does not disclose, teach, or suggest the emphasized features. Applicants have incorporated the features of original claim 4 into claim 1, and address the rejection on the basis of features in both claims 1 and 4. On page 4 of the Office Action, the following is asserted:

Regarding Claim 4, *Herz* in view of *Arai* disclose a system as stated above in Claim 1. *Herz* further discloses that the user is operable to assign different weights to programming attributes (Col. 11, Lines 27-36 and Col. 12, Lines 26-40). Programming will be selected based on the user's selected priorities. This reads on the claimed user interface being configured to enable the user to prioritize the presentation order (Col. 23, Lines 55-57) of the media corresponding to the media presentation defined by the user.

Applicants respectfully disagree in that it is not a *presentation order* that is prioritized in *Herz*, as required by independent claim 1. *Herz* provides in col. 47, lines 9-24 and col. 48, lines 25-36 as follows:

[col. 47, lines 9-24] From the agreement matrix determined by processor 906 and stored in memory 908, a list of "preferred channel selections" or "virtual channels" is determined. An electronic program or display guide 914 listing the available selections is provided. In accordance with the invention, the display guide 914 is either modified to include fields for the "virtual" channels, or else the recommended programming is highlighted in an obvious manner or reordered for the customer's perusal and selection of the desired programming. Once the customer has selected the desired virtual channel from a highlighted program guide or a listing of the programs available on the virtual channels using the customer's remote control unit, processor 906 then accordingly instructs channel selector 912

to tune the channels for the programming determined in accordance with the techniques of the invention to be most desirable to that customer.

[col. 48, lines 25-36] From the agreement matrix, microprocessor 1006 satisfies the customer's "appetite" for video programming by creating a designated number of "virtual" channels for the customer's consideration at any given time. The "virtual" channels determined by microprocessor 1006 are then presented to the customer's television via screen generating circuit 1014 and a modulator 1018 in accordance with known techniques. The customer then tunes to the desired channel or "virtual" channel to receive the program selected to match that customer's interests.

As is clear from the above excerpts from *Herz*, the user selects among a plurality of virtual channels. That is, it appears that the virtual channels comprise titles of content that can be viewed in any particular order for a particular time slot. Thus, since *Herz* and *Arai* fail to disclose, teach, or suggest *wherein the user interface is configured to enable the user to prioritize in advance of a time corresponding to the media presentation the presentation order of the media corresponding to the media presentation defined by the user*, as recited in independent claim 1, Applicants respectfully request that the rejection to independent claim 1 be withdrawn.

Because independent claim 1 is allowable over the proposed combination, dependent claims 2, 3, and 5-25 are allowable as a matter of law for at least the reason that the dependent claims 2, 3, and 5-25 contain all elements of the respected base claim. See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

Additionally, the Office Action asserts that "it is implicit that the virtual channel is a continuous stream of programming selected from various channels" (with regard to independent claim 1) and that it "implicit that there be a plurality of screen displays in order to accomplish each of these tasks" (with regard to claim 7). Applicants respectfully

disagree. The manual of patent examining procedure (MPEP), specifically section 2163.07(a), provides that:

To establish inherency, the extrinsic evidence “must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.

It is respectfully noted that a virtual channel may extract content from a single channel based on user preference, thus it is not necessarily so that the virtual channel arises from a continuous stream of programming selected from various channels. Additionally, it is respectfully noted that a single display may be used to implement the various tasks described in *Herz*, and thus it is not necessarily so that multiple displays are used.

Further, Official Notice has been taken with regard to claims 23 and 24. In particular, the Office Action (page 8) provides as follows:

Official Notice is hereby taken that it is notoriously well known in the art to use cross fading when transitioning from one audio segment to another. Official Notice is hereby taken that it is notoriously well known to buffer streaming data in order to begin playback of the data before the entire data is downloaded and prevent disruptions in playback due to network problems or the like.

Applicants respectfully traverse this finding of well-known art and submit that the subject matter noted above should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support the conclusions, as required. The Manual of Patent Examining Procedure (MPEP) defines the standard for taking official notice. As provided in MPEP § 2144.03:

Official notice without documentary evidence to support an examiner’s conclusion is permissible only in some circumstances. While “official notice” may be relied on, these circumstances should be rare when an application is under final rejection or action

under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424, F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be “capable of such instant and unquestionable demonstration as to defy dispute” (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

As provided in MPEP § 2144.03 (emphasis added):

If applicant adequately traverses the examiner’s assertion of official notice, *the examiner must provide documentary evidence in the next Office action* if the rejection is to be maintained. See 37 CFR 1.104(c)(2).

Accordingly, Applicants traverse the Examiner’s use of official notice. Because of this traversal, the Examiner must support his finding with evidence, or withdraw the official notice determination.

Independent claim 26

Claim 26 recites (with emphasis added):

A method for presenting a user-defined media presentation, the method comprising:

providing a user interface to a user to receive user definition of media information, wherein the media information characterizes media for the media presentation, wherein providing comprises providing a plurality of screen displays for receiving user input that defines the media presentation with increasing detail;

searching for the media corresponding to the user-defined media information among a plurality of media streams;

automatically segueing media stream changes among the plurality of media streams to present the media corresponding to the user-defined media information; and

providing at least one of the plurality of the screen displays for enabling the user to prioritize in advance of a time corresponding to the media presentation the order in which the media of the media presentation is presented to the user.

Applicants respectfully submit that the combination of *Herz* and *Arai* does not disclose, teach, or suggest the emphasized features. Applicants have incorporated the features of original claims 27 and 32 into claim 26, and address the rejection on the basis of features in claims 26, 27, and 32. With regard to the original claim 27 limitations, the Office Action states (on page 8) that each “criterion the user specifies inherently limits the scope of the search.” Applicants respectfully traverse this finding of inherency, since it may be possible to broaden the scope if AND-type logic is used for the search. With regard to the claim 32 limitations, the Office Action directs the focus on the rejection to claim 4, reproduced below as follows:

Regarding Claim 4, Herz in view of Arai disclose a system as stated above in Claim 1. Herz further discloses that the user is operable to assign different weights to programming attributes (Col. 11, Lines 27-36 and Col. 12, Lines 26-40). Programming will be selected based on the user’s selected priorities. This reads on the claimed user interface being configured to enable the user to prioritize the presentation order (Col. 23, Lines 55-57) of the media corresponding to the media presentation defined by the user.

Applicants respectfully disagree in that it is not a *presentation order* that is prioritized in *Herz*, as required by independent claim 26. *Herz* provides in col. 47, lines 9-24 and col. 48, lines 25-36 as follows:

[col. 47, lines 9-24] From the agreement matrix determined by processor 906 and stored in memory 908, a list of "preferred channel selections" or "virtual channels" is determined. An electronic program or display guide 914 listing the available selections is provided. In accordance with the invention, the display guide 914 is either modified to include fields for the "virtual" channels, or else the recommended programming is highlighted in an obvious manner or reordered for the customer's perusal and selection of the desired programming. Once the customer has selected the desired virtual channel from a highlighted program guide or a listing of the programs available on the virtual channels using the customer's remote

control unit, processor 906 then accordingly instructs channel selector 912 to tune the channels for the programming determined in accordance with the techniques of the invention to be most desirable to that customer.

[col. 48, lines 25-36] From the agreement matrix, microprocessor 1006 satisfies the customer's "appetite" for video programming by creating a designated number of "virtual" channels for the customer's consideration at any given time. The "virtual" channels determined by microprocessor 1006 are then presented to the customer's television via screen generating circuit 1014 and a modulator 1018 in accordance with known techniques. The customer then tunes to the desired channel or "virtual" channel to receive the program selected to match that customer's interests.

As is clear from the above excerpts from *Herz*, the user selects among a plurality of virtual channels. That is, it appears that the virtual channels comprise titles of content that can be viewed in any particular order for a particular time slot. Thus, since *Herz* and *Arai* fail to disclose, teach, or suggest *providing at least one of the plurality of the screen displays for enabling the user to prioritize in advance of a time corresponding to the media presentation the order in which the media of the media presentation is presented to the user*, as recited in independent claim 26, Applicants respectfully request that the rejection to independent claim 26 be withdrawn.

Because independent claim 26 is allowable over the proposed combination, dependent claims 28-31, and 33-38 are allowable as a matter of law.

Additionally, where the Office Action equates the rejection made in claim 24 to claim 36, Applicants respectfully traverse the Examiner's use of official notice. Because of this traversal, the Examiner must support his finding with evidence, or withdraw the official notice determination.

Claims 11-13 and 34-35

As explained above, *Herz* in view of *Arai* fail to disclose, teach, or suggest the above-described claim features of independent claims 1 and 26. Because claims 11-3 and 34-35 contain the features of independent claims 1 and 26, respectively, it is respectfully submitted that *Herz* in view of *Arai* fail to disclose, teach, or suggest the claim features of claims 11-13 and 34-35. Because *Maze* does not remedy these deficiencies, Applicants respectfully request that the rejections to claims 11-13 and 34-35 be withdrawn.

In summary, it is Applicants' position that a *prima facie* for obviousness has not been made against Applicants' claims. Therefore, it is respectfully submitted that each of these claims is patentable over the proposed combination of references and that the rejection of these claims should be withdrawn.

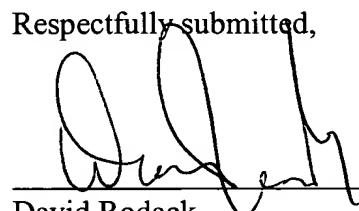
V. Canceled Claims

As identified above, claims 4, 27, and 32 have been canceled from the application through this Response without prejudice, waiver, or disclaimer. Applicants reserve the right to present these canceled claims, or variants thereof, in continuing applications to be filed subsequently.

CONCLUSION

Applicants respectfully submit that Applicants' pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, and similarly interpreted statements, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

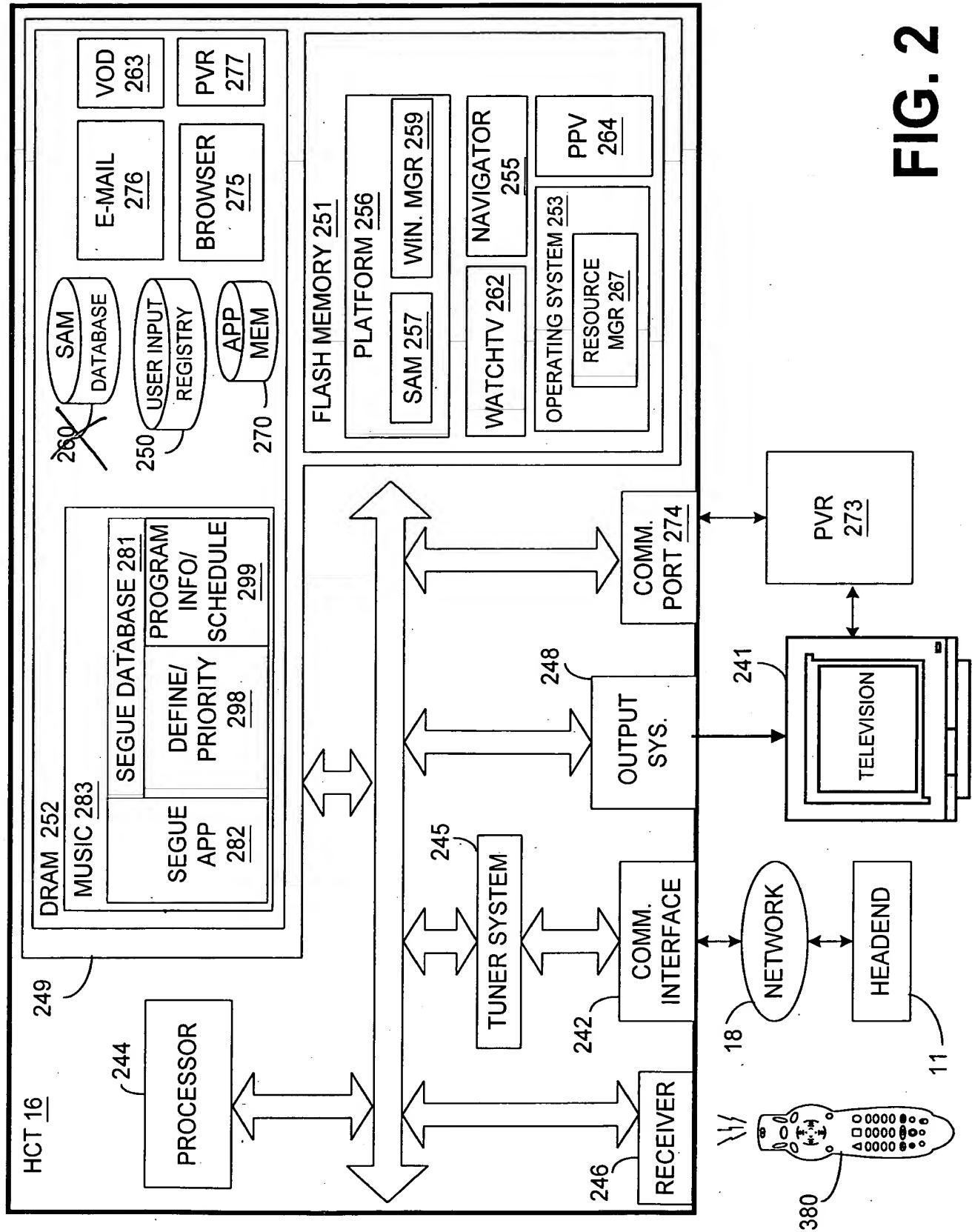


David Rodack
Registration No. 47,034

**THOMAS, KAYDEN,
HORSTEMEYER & RISLEY, L.L.P.**
Suite 1750
100 Galleria Parkway N.W.
Atlanta, Georgia 30339
(770) 933-9500

Drawings

Applicants have enclosed a red-lined copy of FIGs. 2 and 7-26 showing the amendments made to the figures, and have also enclosed clean-copy replacement sheets that incorporate the changes noted in the red-lined figures.



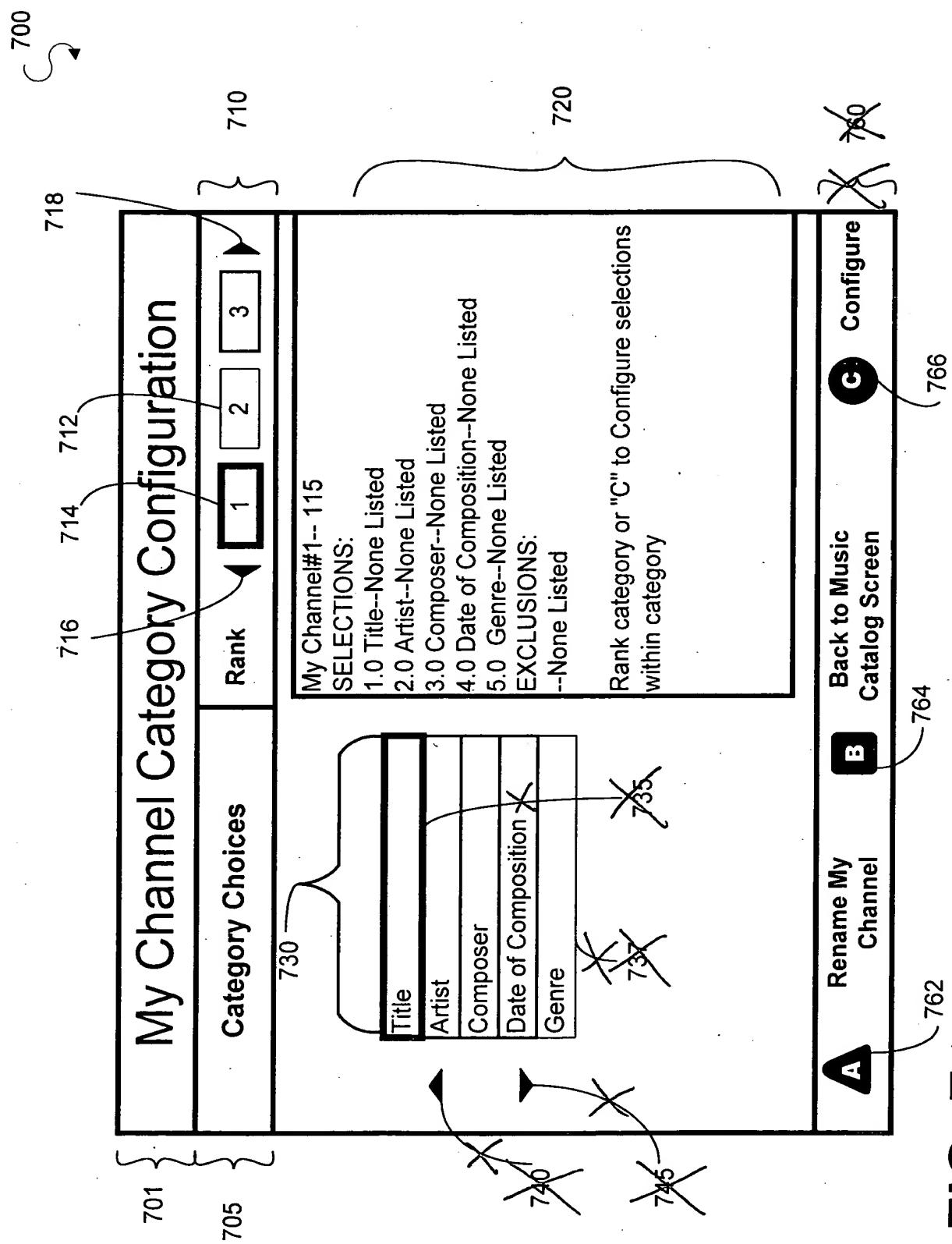
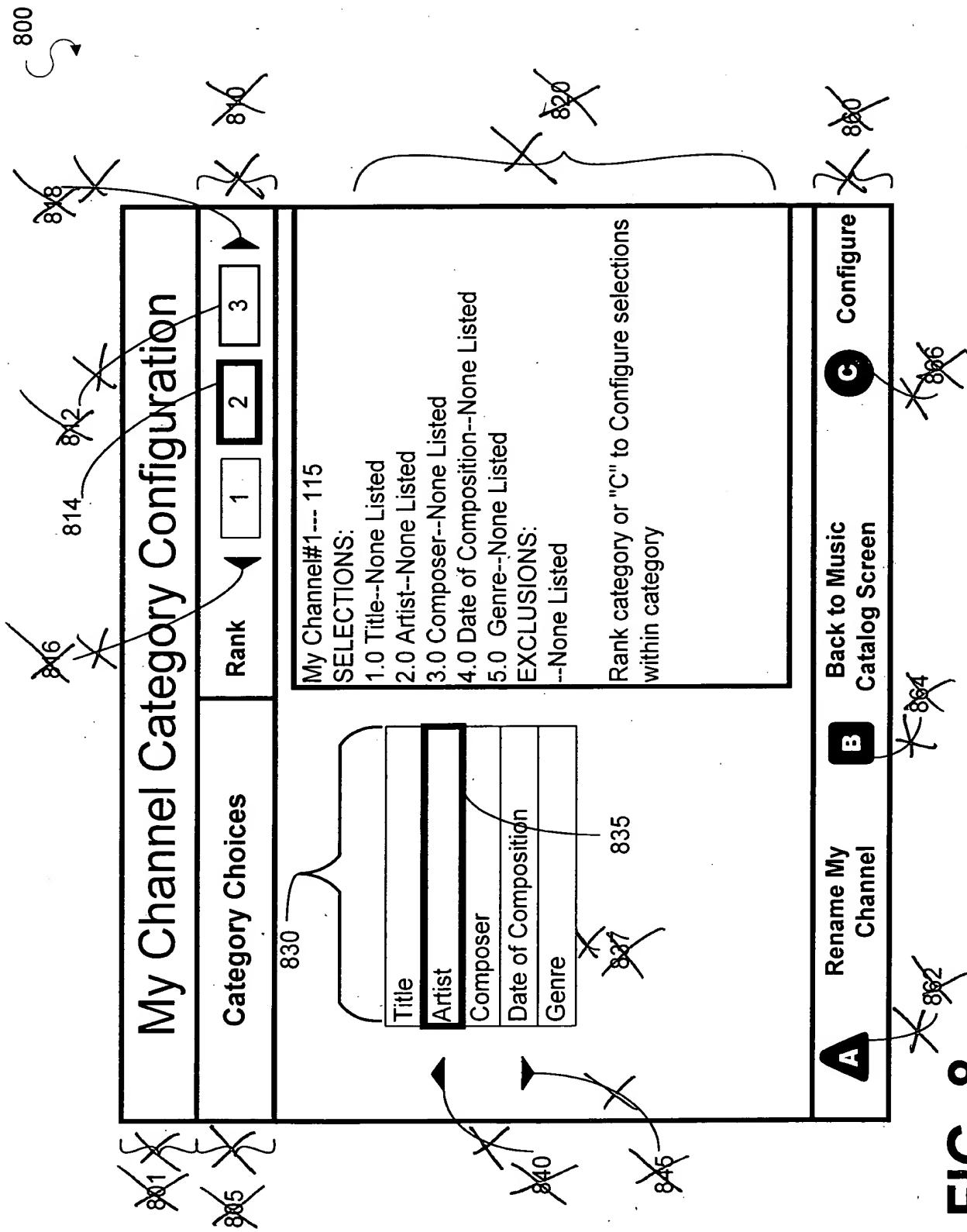


FIG. 7



80
E.G.

9/26

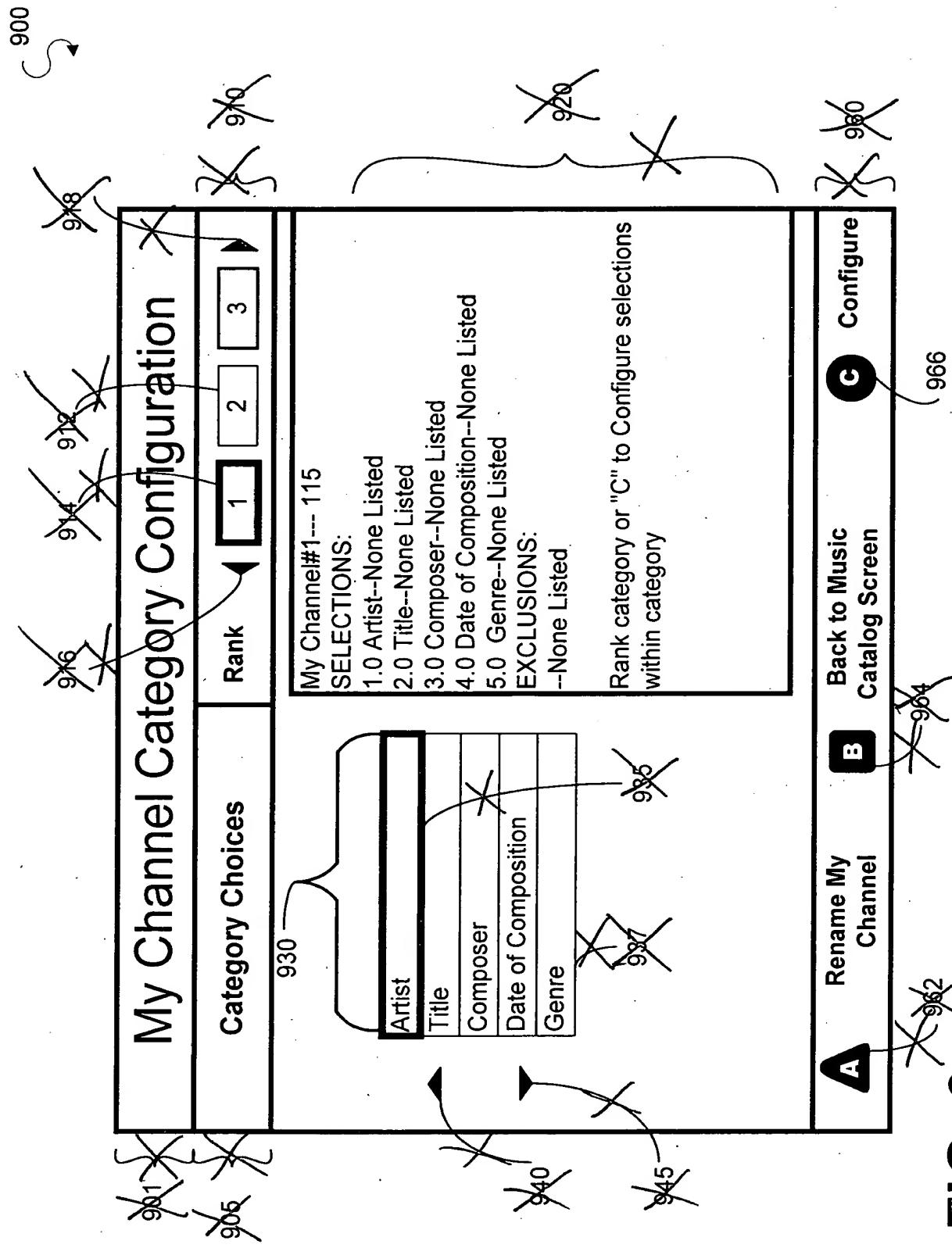


FIG. 9

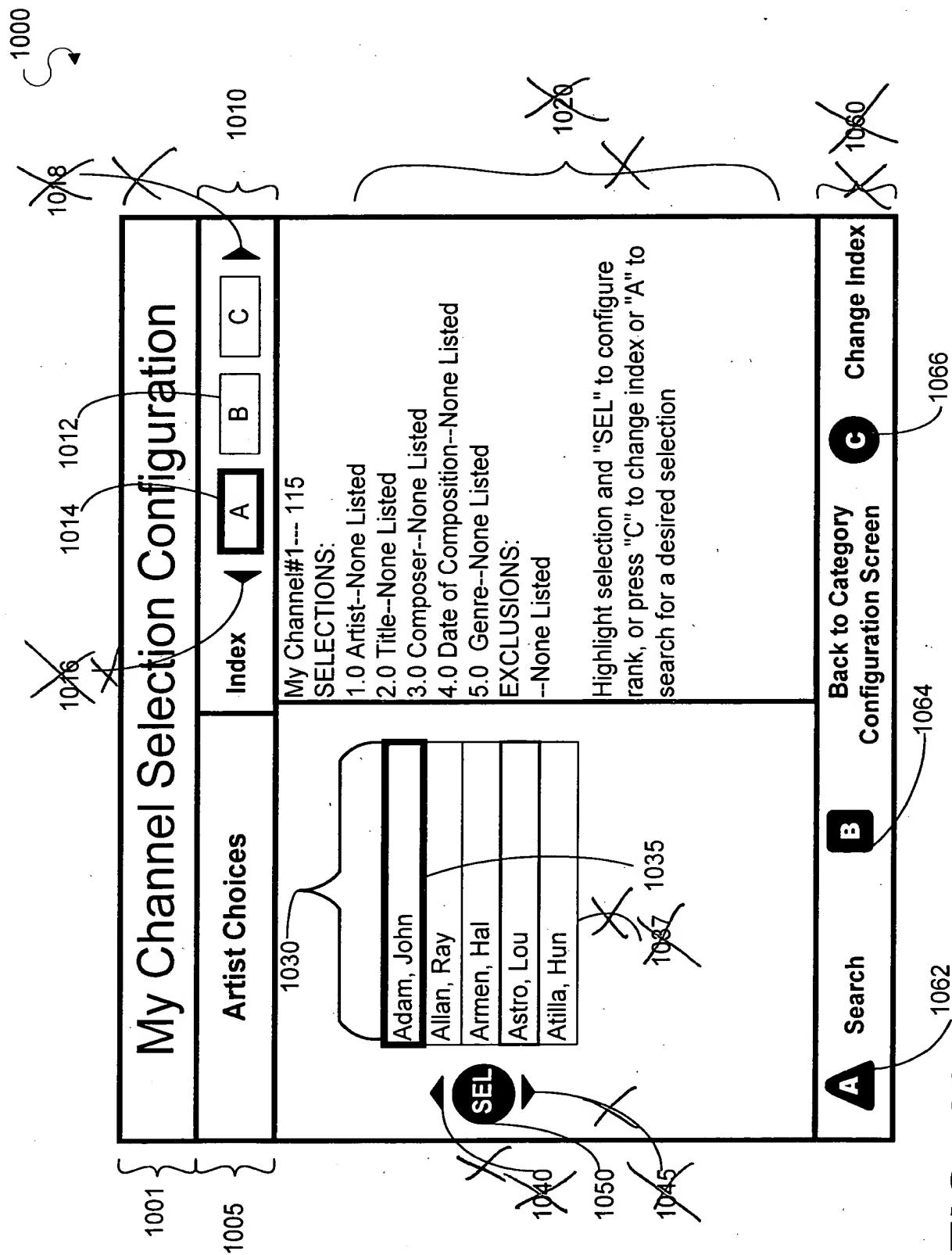
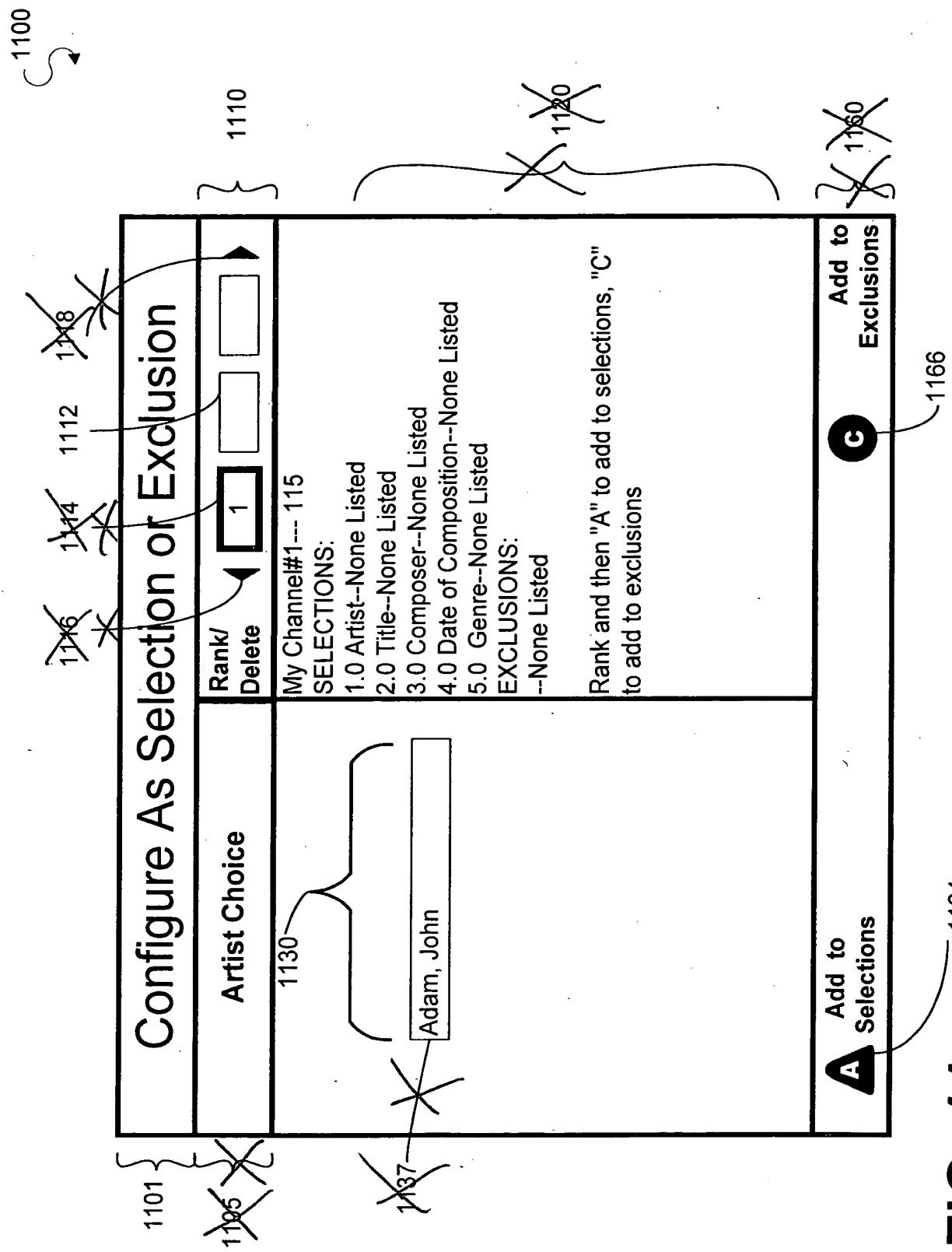


FIG. 10

**FIG. 11**

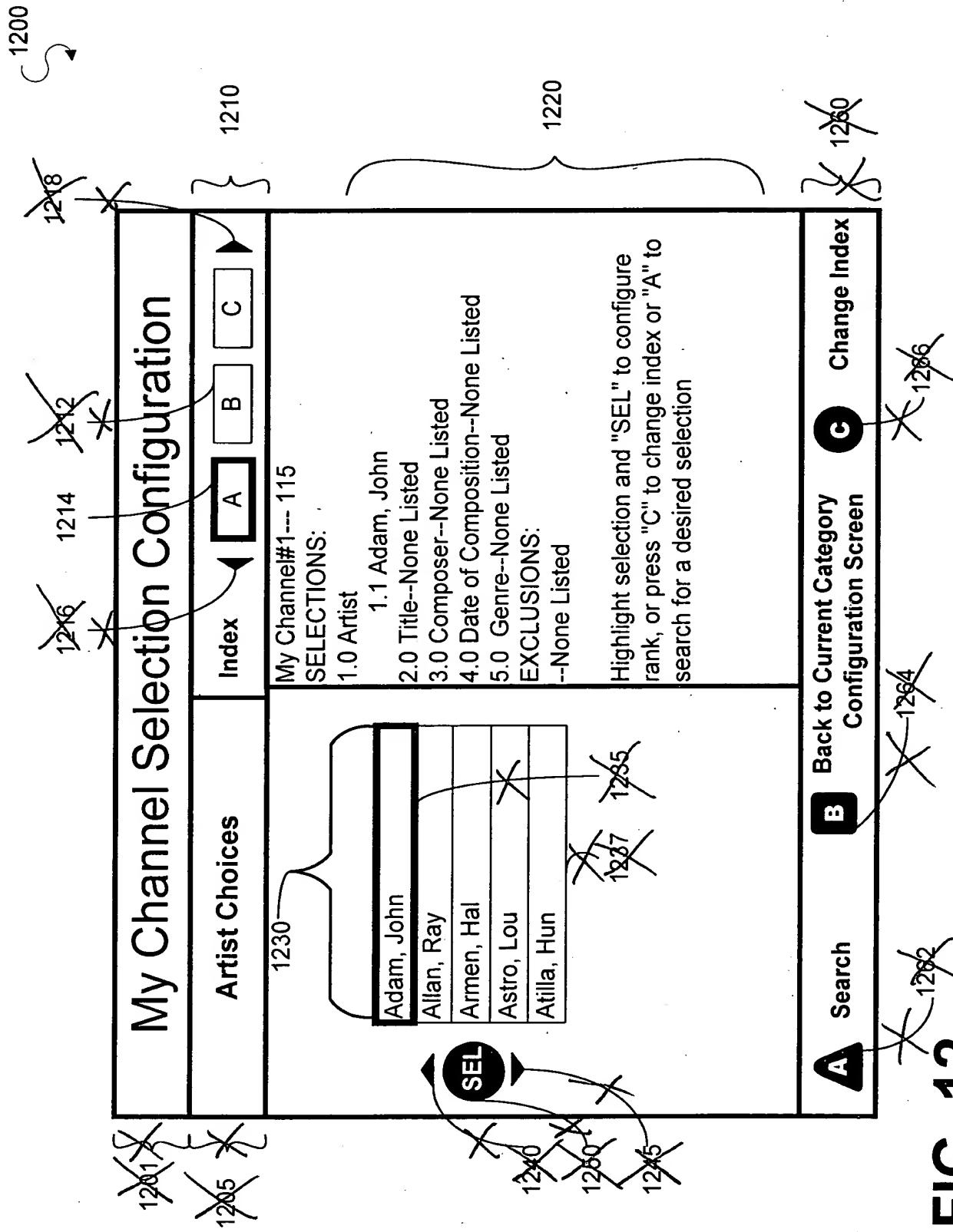


FIG. 12

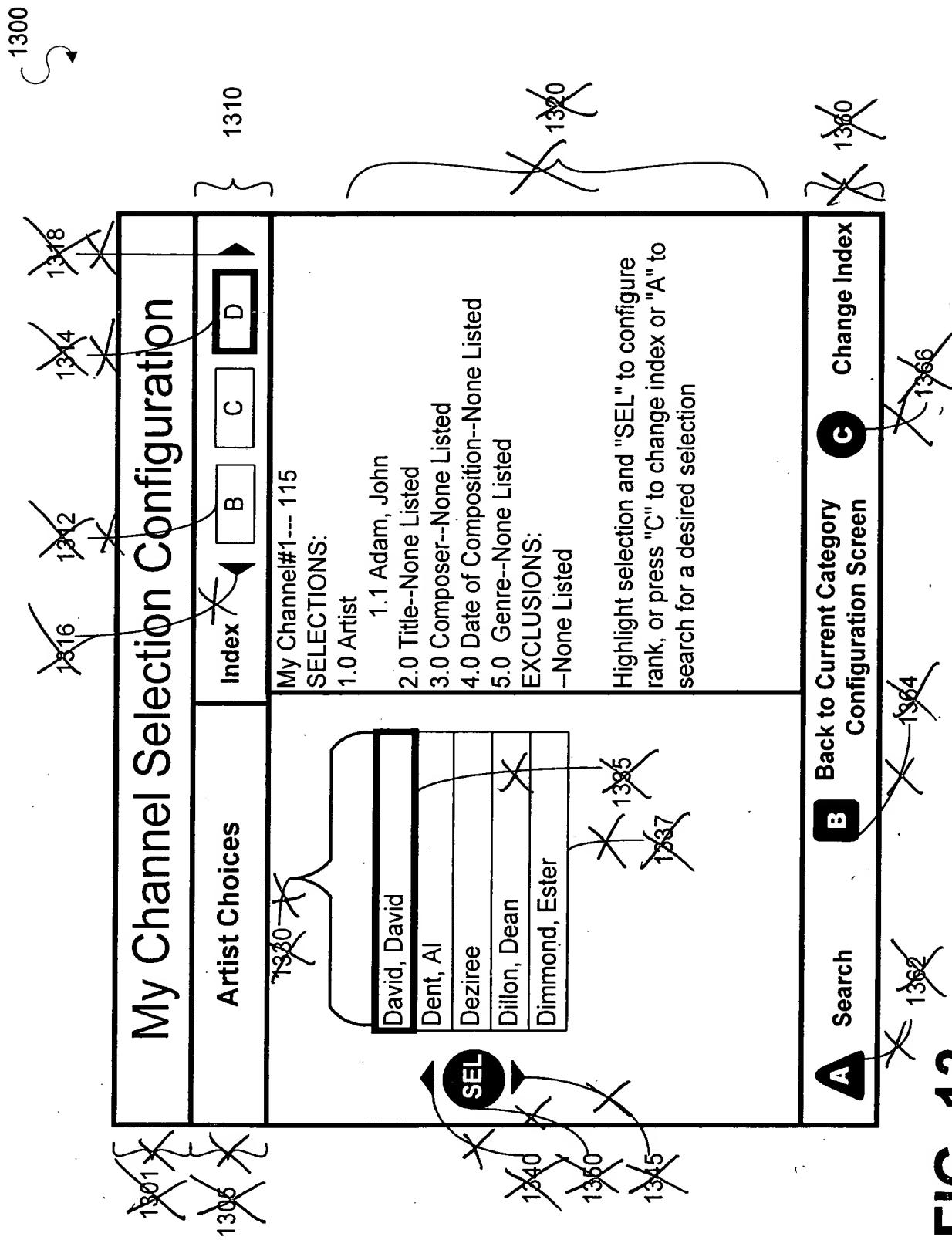


FIG. 13

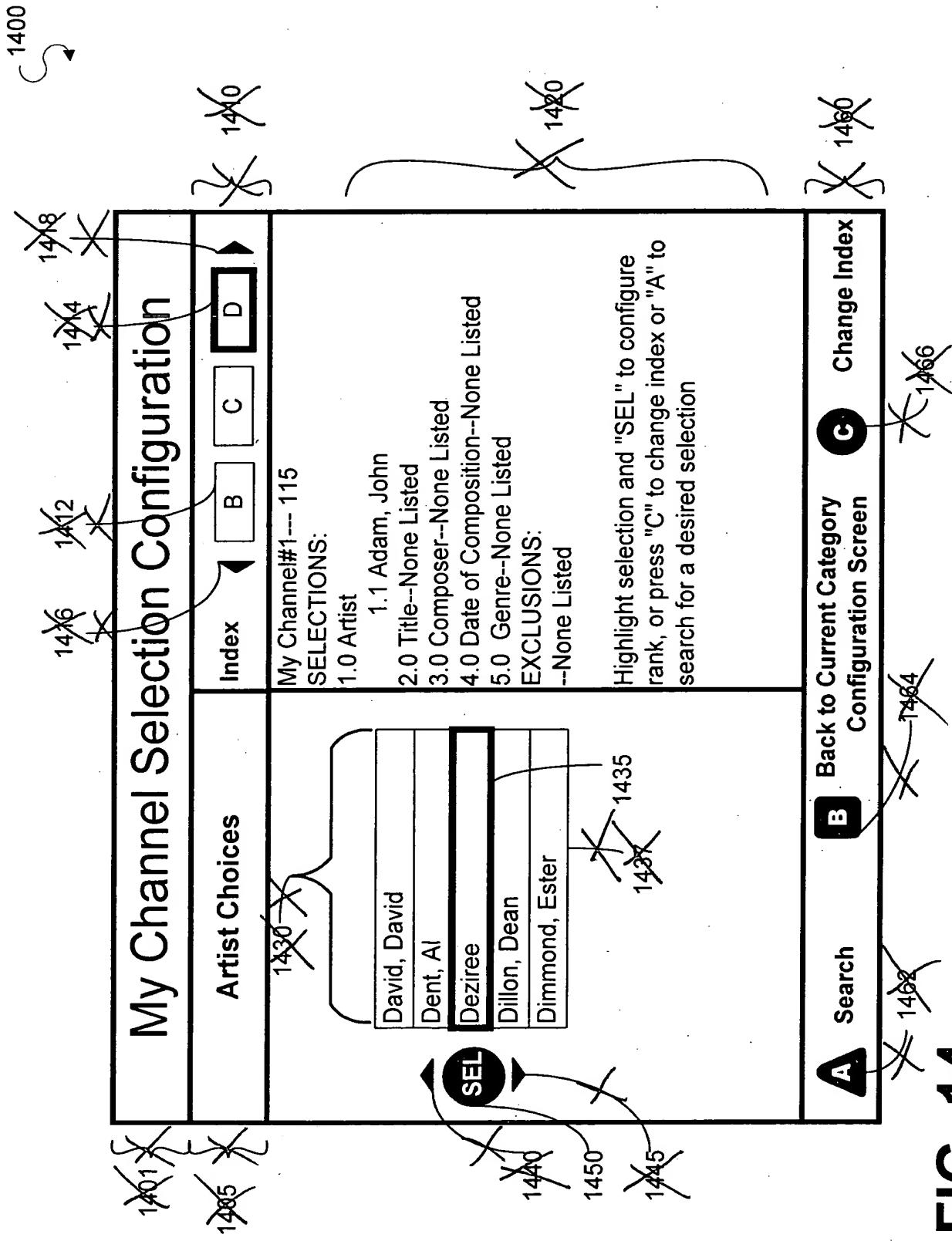


FIG. 14

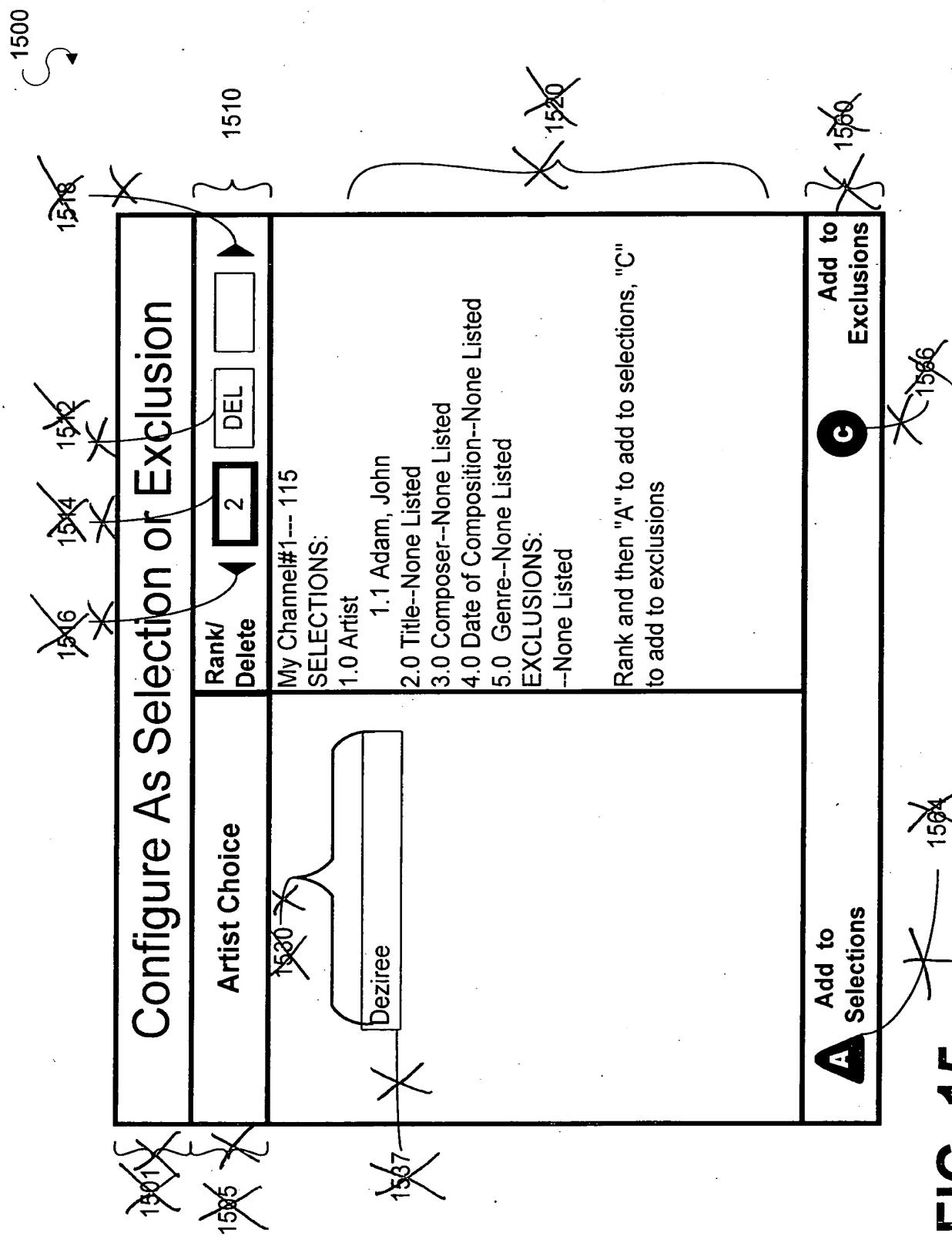


FIG. 15

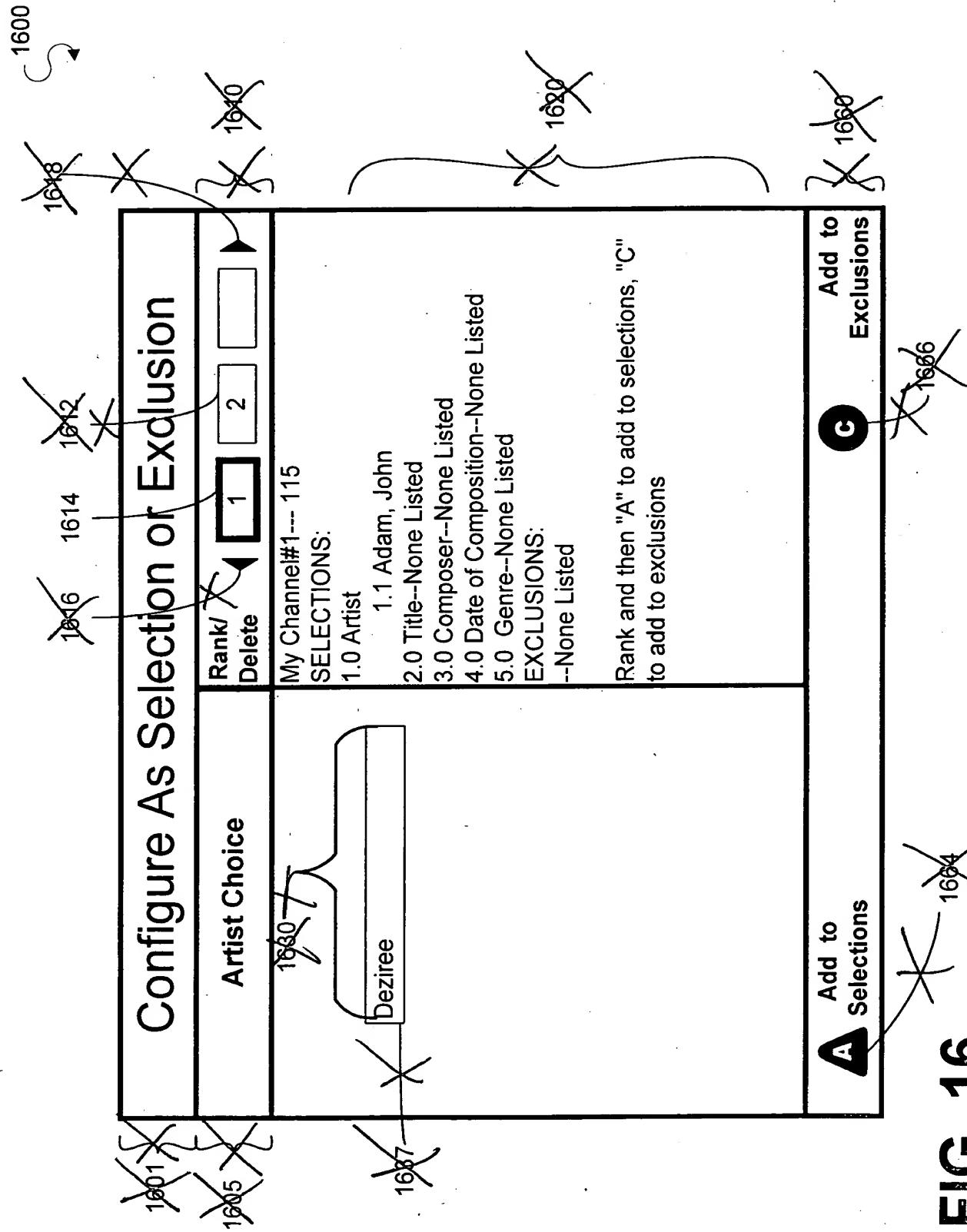


FIG. 16

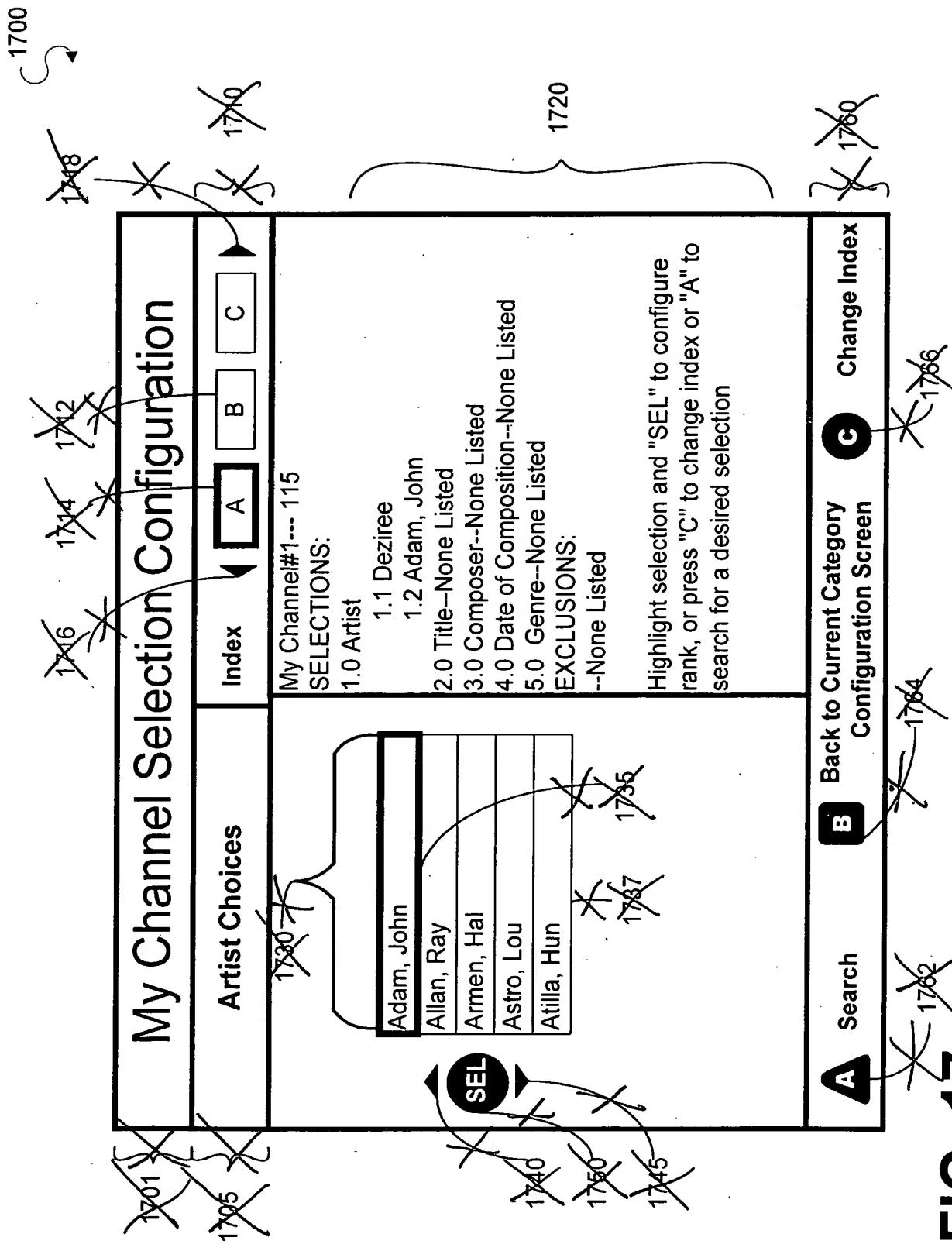


FIG. 17

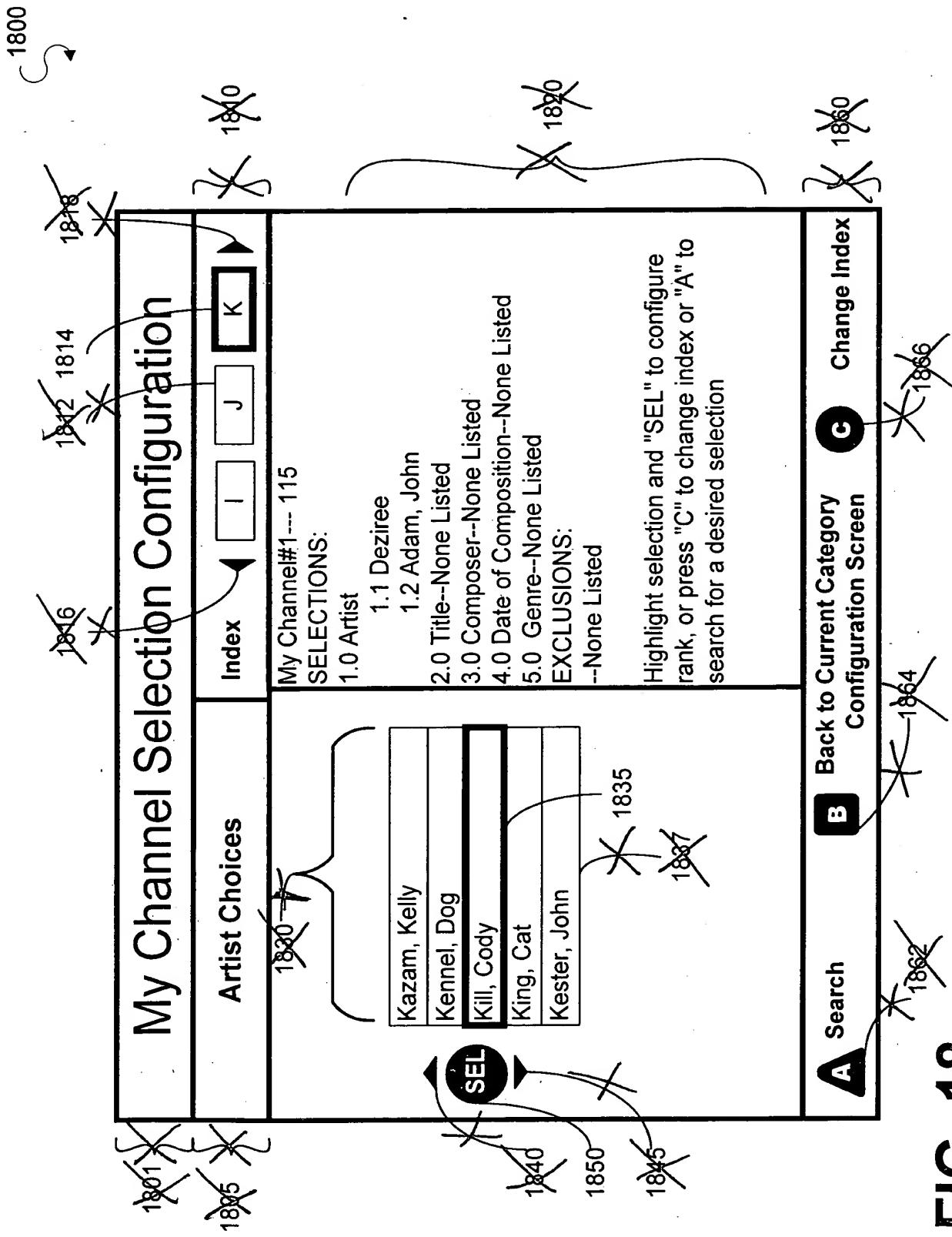
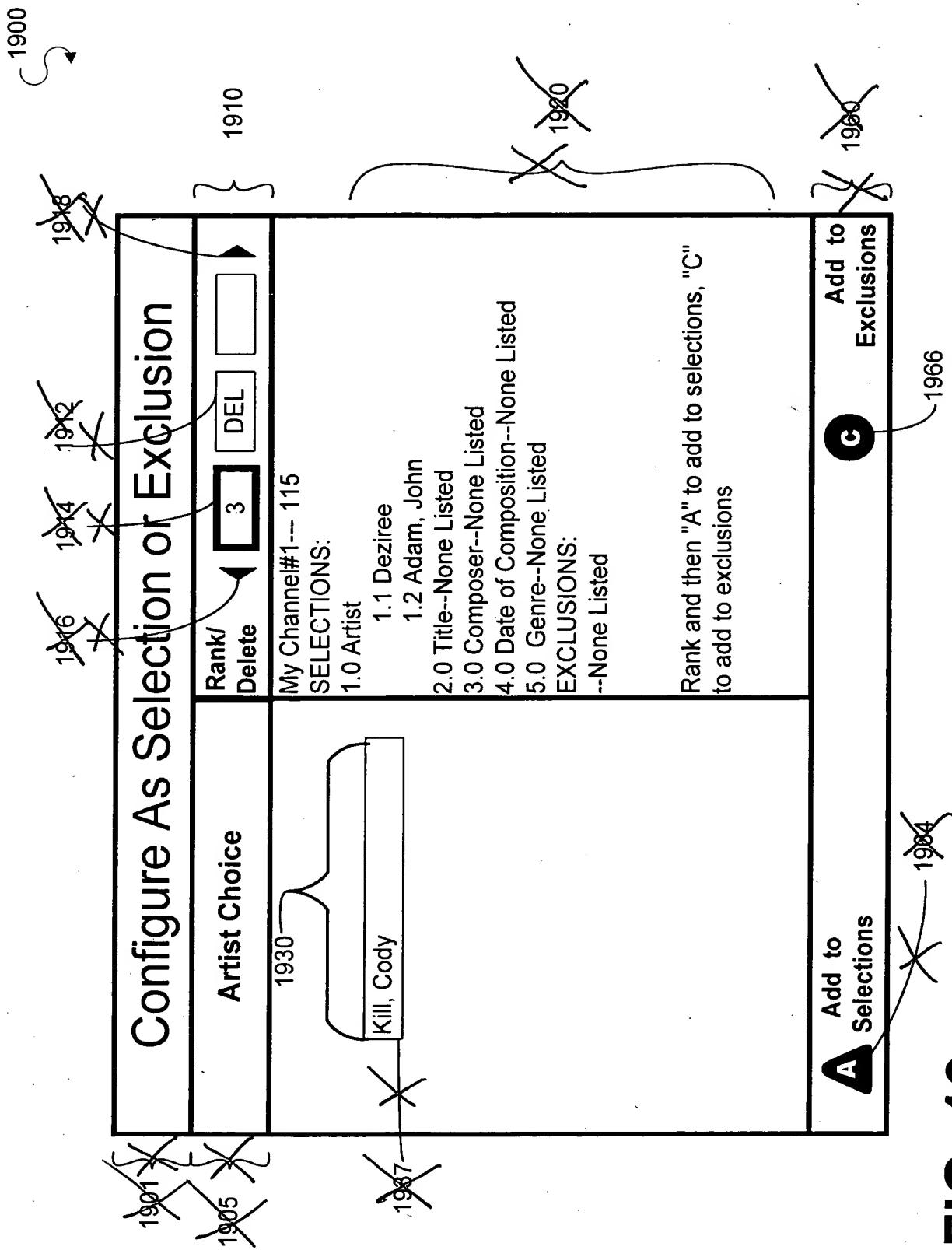


FIG. 18



19 FIG.

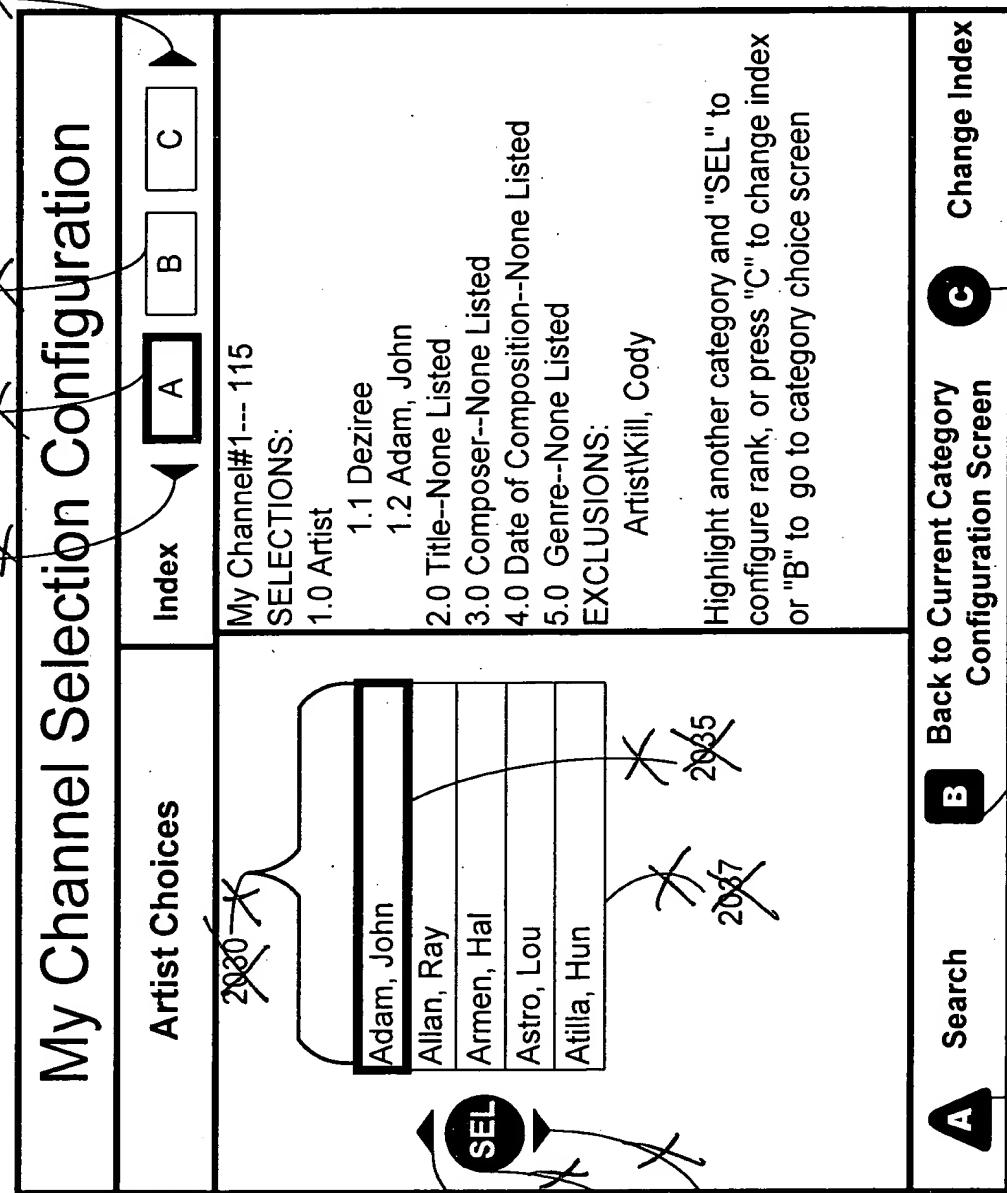


FIG. 20

21/26

2100
2100

Music Catalog

Music Channels

2130

Jazz, Ch. 110
R&B Hits, Ch. 111
Dance, Ch. 112
Rap, Ch. 113
Metal, Ch. 114
My Channel#1, 115
My Channel#2, 116
My Channel #3, 117
My Channel #4, 118

2130

My Channel#1--- 115

SELECTIONS:

1.0 Artist

1.1 Deziree

1.2 Adam, John

2.0 Title--None Listed

3.0 Composer--None Listed

4.0 Date of Composition--None Listed

5.0 Genre--None Listed

EXCLUSIONS:

Artist\Kill, Cody

Press Select to Play or "C" to Configure

2135

SEL

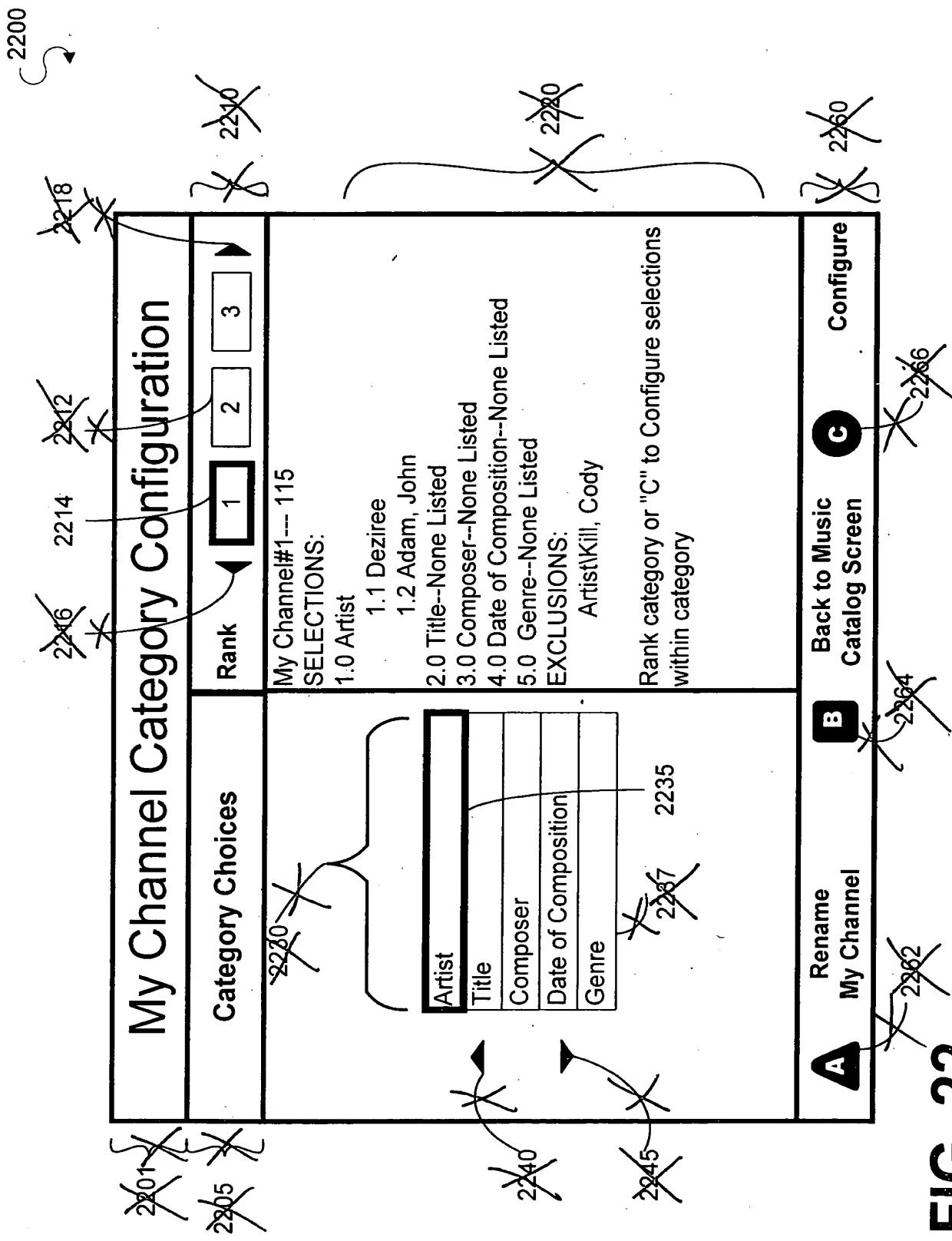
2105
2107
2110
2115
2116
2117
2118
2119
2120
2125
2126
2127
2128
2129
2130
2131
2132
2133
2134
2135
2136
2137
2138
2139
2140
2141
2142
2143
2144
2145
2146
2147
2148
2149
2150
2151
2152
2153
2154
2155
2156
2157
2158
2159
2160
2161
2162
2163
2164
2165
2166
2167
2168
2169
2170
2171
2172
2173
2174
2175
2176
2177
2178
2179
2180
2181
2182
2183
2184
2185
2186
2187
2188
2189
2190
2191
2192
2193
2194
2195
2196
2197
2198
2199
2200

A Service Guide

c Configure My Channel

X 2190

FIG. 21



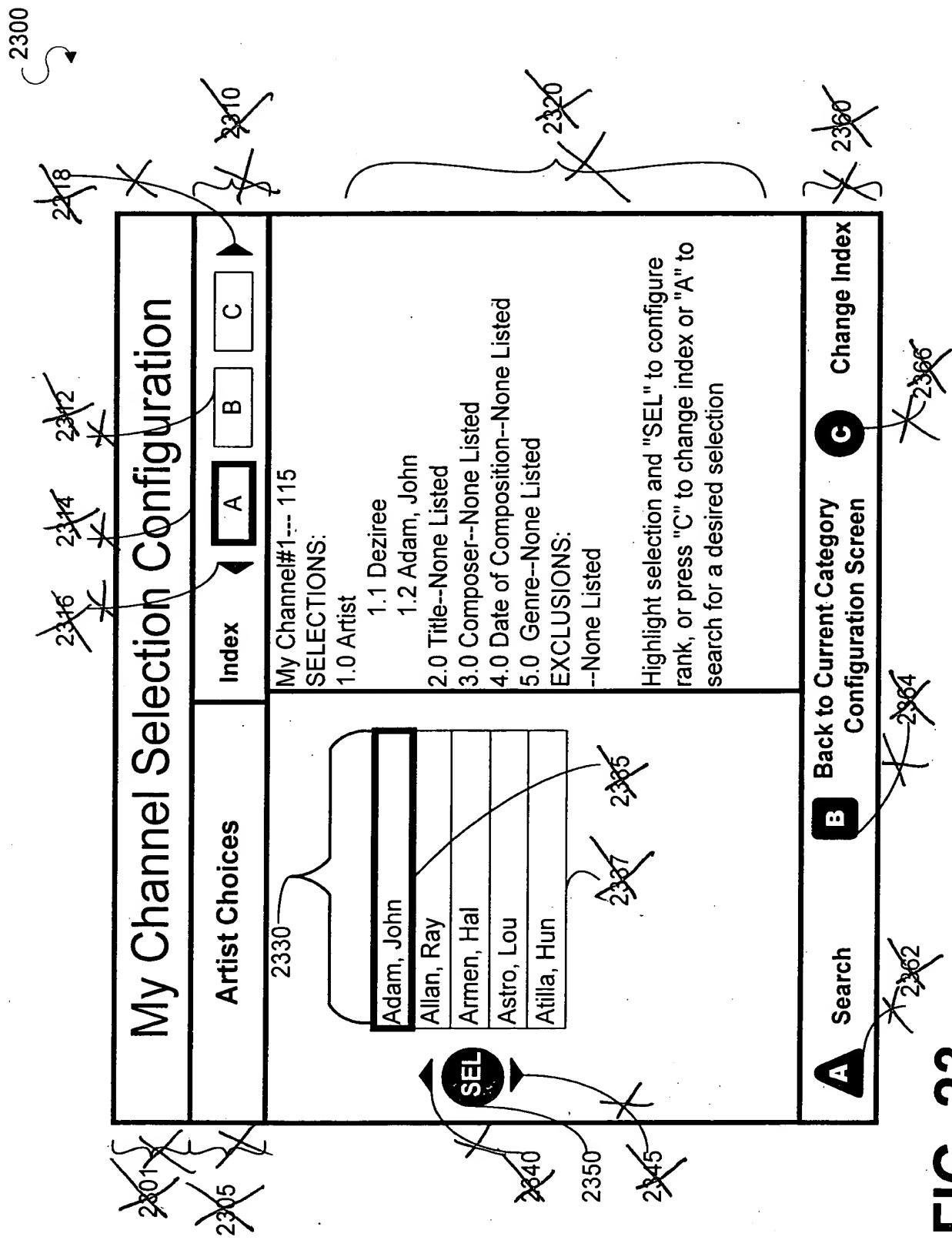


FIG. 23

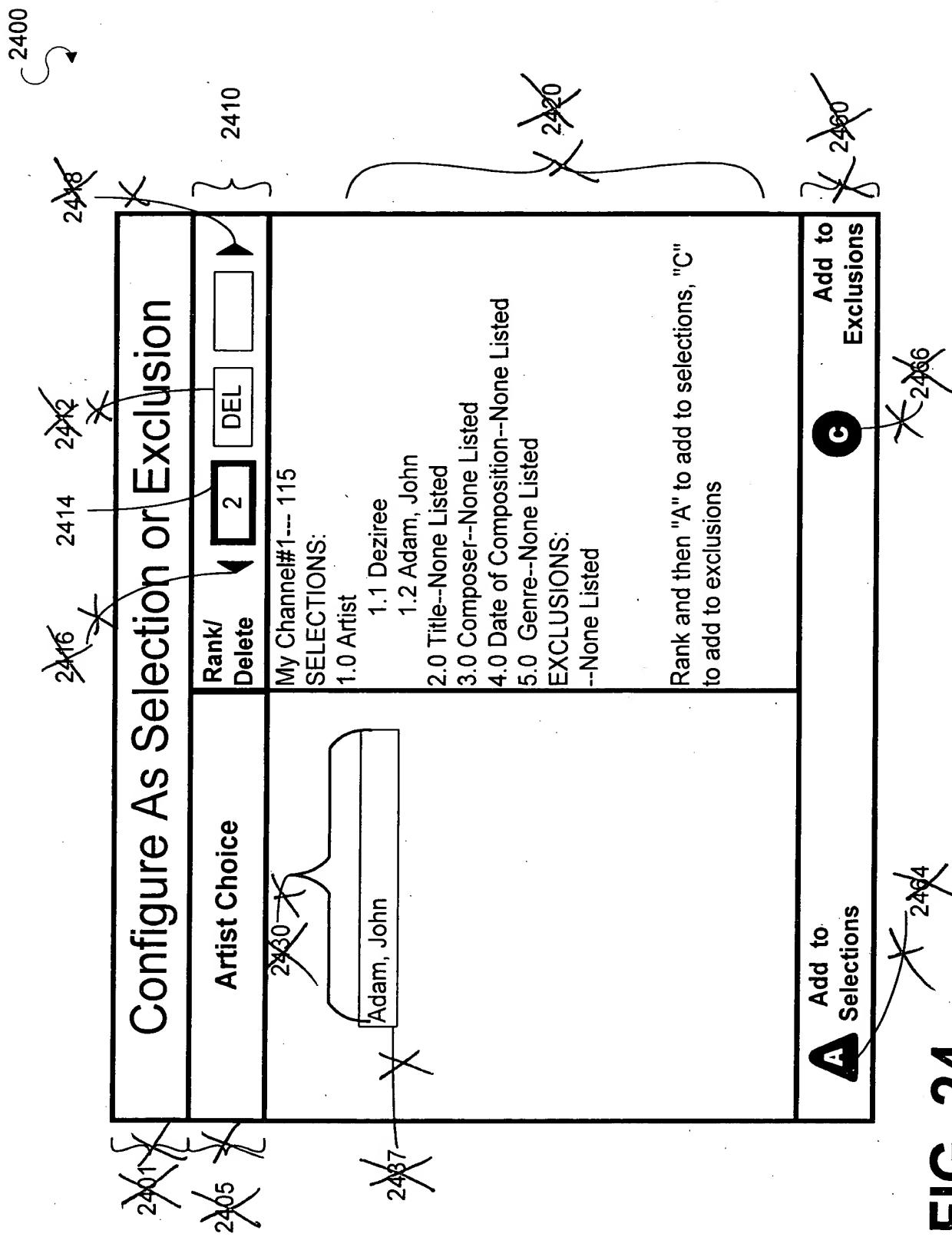
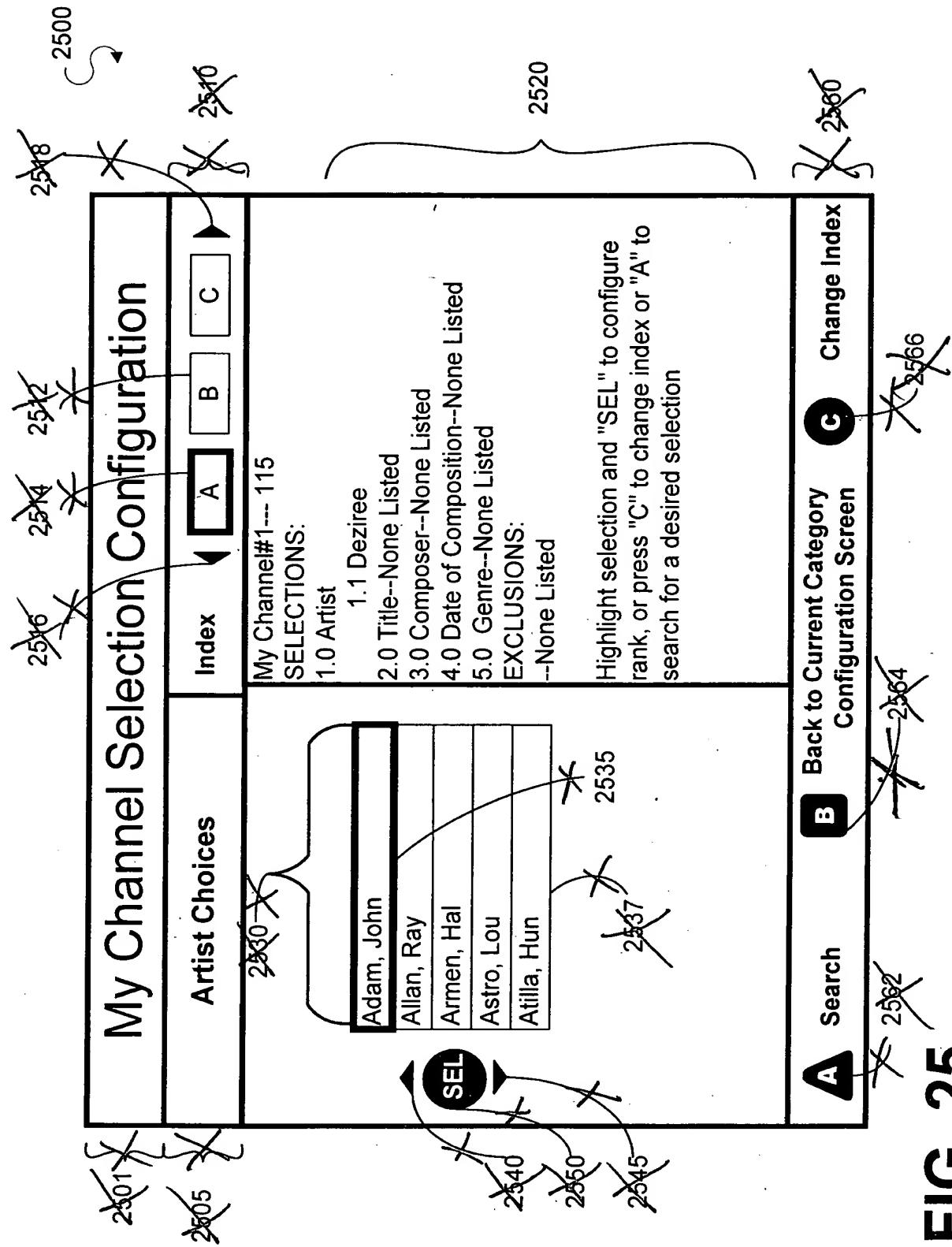


FIG. 24

**FIG. 25**

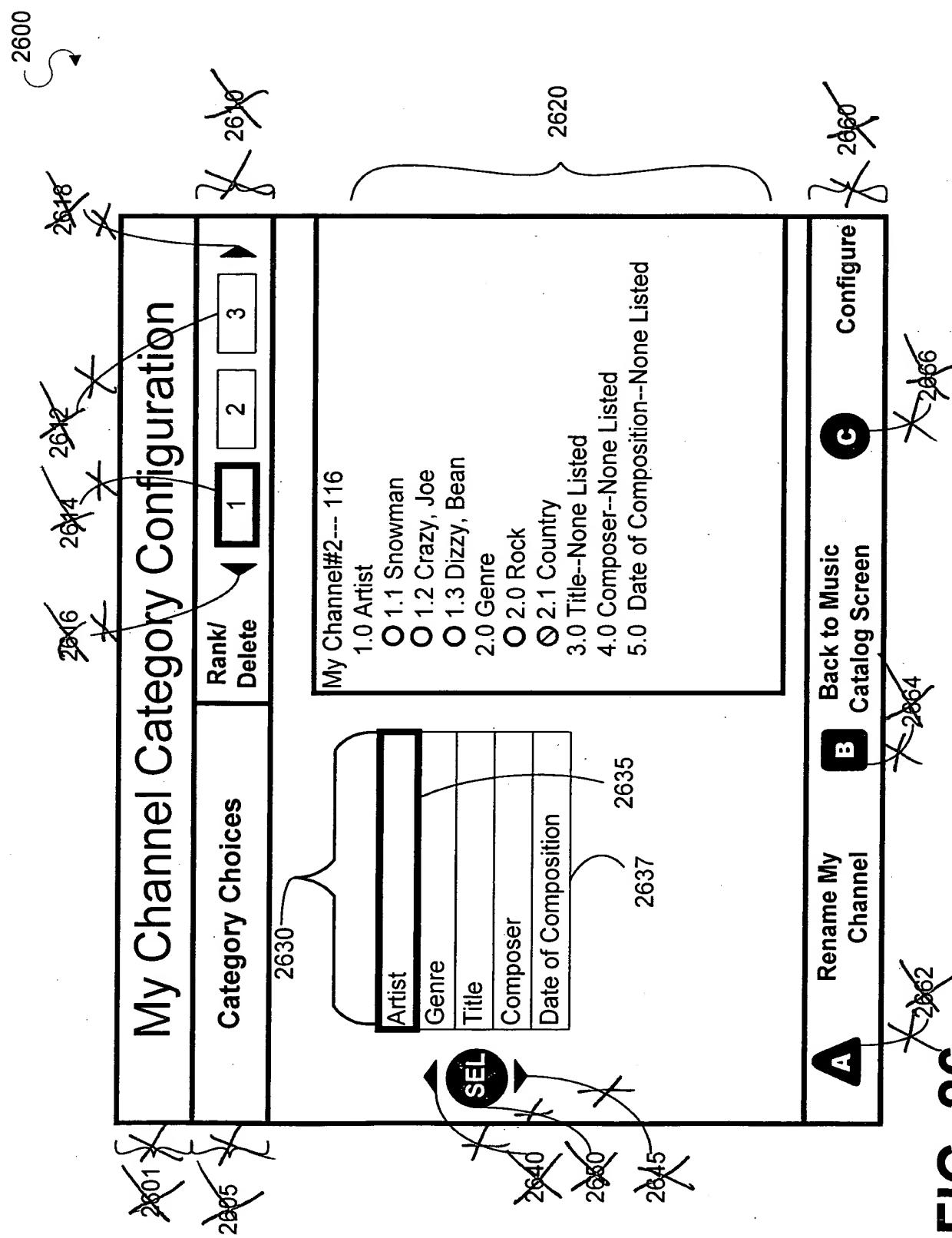


FIG. 26